

PT 95-69
Tax Type: PROPERTY TAX
Issue: Religious Ownership/Use

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
SPRINGFIELD, ILLINOIS

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CATHOLIC DIOCESE OF BELLEVILLE      )  
    Applicant                        )   Docket #   93-44-5  
                                     )   Parcel Index # 03-34-303-000  
                                     )  
          v.                         )  
                                     )  
                                     )   (Johnson County)  
                                     )  
THE DEPARTMENT OF REVENUE             )   George H. Nafziger  
OF THE STATE OF ILLINOIS             )   Administrative Law Judge  
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RECOMMENDATION FOR DISPOSITION

APPEARANCES: Attorneys Conny Davinroy Beatty and T. Bradford Waltrip appeared on behalf of the Catholic Diocese of Belleville (hereinafter referred to as the "applicant"). Attorney John F. Erbes appeared on behalf of New Simpson Hill Consolidated School District No. 32 and Vienna High School District No. 13-3, the Intervenors herein (hereinafter referred to as the "School Districts").

SYNOPSIS: The hearing in this matter was held at 1100 Eastport Plaza Drive, Collinsville, Illinois, on May 3, 1995, to determine whether or not Saint Noel Retreat and Conference Center (hereinafter referred to as "St. Noel"), and the land on which it is located, which is situated on Johnson County parcel No. 03-34-303-000, should be exempt from real estate tax for the 1993 assessment year.

Mr. Patrick R. Higgins, executive director of Camp Ondessonk, and Mr. Terry Elms, superintendent of New Simpson Hill Consolidated School District No. 32, were present, and testified at the hearing in this matter.

The issues in this matter include first, whether the Applicant is a religious organization, and also whether the applicant owned the parcel

here in issue during the 1993 assessment year. The second issue is whether the applicant used St. Noel and the land on which it is located, for religious purposes during the 1993 assessment year. The third issue is whether the applicant used St. Noel and the land on which it is located, for charitable purposes during the 1993 assessment year. Following the submission of all of the evidence and a review of the record, it is determined that the applicant is a religious organization, and that it owned the parcel here in issue during the 1993 assessment year. It is further determined that the applicant did not use St. Noel and the land on which it is located, primarily for religious purposes during the 1993 assessment year. Finally, it is determined that the applicant did not use St. Noel and the land on which it is located, primarily for charitable purposes during the 1993 assessment year.

FINDINGS OF FACT:

1. I take Administrative Notice of the fact that the Illinois Department of Revenue (hereinafter referred to as the "Department"), has previously determined in Docket numbers 87-44-15 and 87-44-16, that the applicant is a religious organization, and that the applicant owned the parcel here in issue, which contains part of Camp Ondessonk, a wilderness camping facility for youth.

2. During May 1992, the applicant completed St. Noel, which is located on this parcel.

3. Pursuant to an application for the 1993 assessment year, the Department on December 22, 1994, exempted the parcel here in issue, including St. Noel, except for certain residential facilities in the Camp Ondessonk wilderness camp area of said parcel (Dept. Ex. No. 3).

4. The School Districts requested a formal hearing, concerning only the exemption of St. Noel and the land on which it is located.

5. At the hearing on May 3, 1995, the parties stipulated that the sole

issue was whether St. Noel qualified for exemption for the 1993 assessment year (Tr. p. 10).

6. St. Noel is located on this parcel, as is a portion of Camp Ondessonk.

7. Camp Ondessonk is primarily a youth camping program for thirty-five hundred to four thousand fifth through ninth grade youth, each summer.

8. Camp Ondessonk draws youth campers from primarily the Catholic school systems, in Illinois, Missouri, and Kentucky.

9. The youth campers spend a week or so in rustic cabins, tree houses, or possibly caves.

10. St. Noel is operated by the same board of directors as is Camp Ondessonk, but generally has a separate staff.

11. St. Noel caters to adults and the elderly. Its programs normally include an overnight stay, usually over a weekend.

12. St. Noel consists of approximately 16,000 square feet, and contains three levels.

13. The lower level of St. Noel, during 1993, contained a ladies' and a men's restroom, a kitchen, a dining hall, a chapel all-purpose room, a library, which includes a soda and snack area, and a housekeeping area.

14. The first floor contained a reception area with a fireplace, a guest service area, which, during 1993, was the administrative offices of St. Noel, including the offices of the director of St. Noel and the receptionist, as well as six two-room with bath, guest suites.

15. The second floor contained six two-room with bath, guest suites.

16. Each suite included two double beds and a sitting area.

17. The reception room, the library, the dining hall, and the chapel all-purpose room, were all available to be used for meetings during 1993.

18. During 1993, St. Noel, through various media, including a color brochure, stated that the St. Noel facility was available for business

conferences and meetings, hotel-type programs for families and individuals, senior get-away tours, fall color weeks or weekends, holiday events or weekends, Murder Mystery Weekends, family reunions, rehearsal dinners, and wedding receptions (Dept. Ex. 2E).

19. There were no statements in the brochure that a conference or program need be a religious-oriented program.

20. Out of a total of \$78,688.11 of income during 1993, charitable contributions to St. Noel were \$228.50, or less than 1 percent.

21. St. Noel's primary sources of income during 1993, were registration fees, lodging charges, meeting room charges, and meal charges.

22. During 1993, St. Noel spent \$32,000.00, or approximately 40 percent of its income, on promoting St. Noel.

23. The applicant prepared applicant's Exhibit 4, concerning the types of users of this facility during 1993.

24. The applicant calculated that the users which it categorized as church organizations, other religious, and educational, charitable, and nonprofit users made up 92 percent of the total users.

25. By the applicant's own calculations, there were a total of 1,265 users of St. Noel during 1993, of which the church organizations, other religious and educational, charitable, and nonprofit users totaled 896 or, in fact, 70 percent.

26. No evidence was offered that the category "individuals", in fact, qualified as other religious. If the 102 individuals are deducted from the other religious, the total of church organizations, other religious, and educational, charitable, and nonprofit users, is then reduced to 794, or 63 percent, of the total usage of St. Noel during 1993.

27. All groups utilizing St. Noel, paid a fee for their use of the facility for lodging, meeting facilities, and meals. No evidence was offered that said fees were ever waived, or reduced. The business groups

paid a higher rate for these services than did the others (Dept. Ex. No. 21).

28. Based on the foregoing, I find that use of St. Noel, during 1993, by the Mystery Weekend people, business groups, and individuals, was not primarily for religious purposes, and was more than merely incidental.

29. Since no evidence was offered that St. Noel ever waived, or reduced, its registration, lodging, meeting room, or meal fees, I find that St. Noel was not used primarily for charitable purposes during 1993.

CONCLUSIONS OF LAW Article IX, Section 6, of the Illinois Constitution of 1970, provides in part as follows:

"The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes."

It is well settled in Illinois, that when a statute purports to grant an exemption from taxation, the fundamental rule of construction is that a tax exemption provision is to be construed strictly against the one who asserts the claim of exemption. *International College of Surgeons v. Brenza*, 8 Ill.2d 141 (1956); *Milward v. Paschen*, 16 Ill.2d 302 (1959); and *Cook County Collector v. National College of Education*, 41 Ill.App.3d 633 (1st Dist. 1976). Whenever doubt arises, it is to be resolved against exemption, and in favor of taxation. *People ex rel. Goodman v. University of Illinois Foundation*, 388 Ill. 363 (1944) and *People ex rel. Lloyd v. University of Illinois*, 357 Ill.369 (1934). Finally, in ascertaining whether or not a property is statutorily tax exempt, the burden of establishing the right to the exemption is on the one who claims the exemption. *MacMurray College v. Wright*, 38 Ill.2d 272 (1967); *Girl Scouts of DuPage County Council, Inc. v. Department*, 189 Ill.App.3d 858 (2nd Dist. 1989); and *Board of Certified Safety Professionals v. Johnson*, 112 Ill.2d 542 (1986). Consequently, it is abundantly clear that the burden of proof

concerning establishing that certain real estate qualifies for exemption from property taxation, is always on the applicant.

35 ILCS 205/19.2 exempts certain property from taxation in part as follows:

"All property used exclusively for religious purposes or used exclusively for school and religious purposes...and not leased or otherwise used with a view to profit...."

As previously pointed out, the Department in Docket numbers 87-44-15 and 87-44-16 has determined that the applicant is a religious organization, and that the applicant owned the parcel here in issue.

Pursuant to the stipulation of the parties, the sole issue in this matter is whether St. Noel was used for either primarily religious, or primarily charitable, purposes during the 1993 assessment year.

Concerning the issue of the use of St. Noel for primarily religious purposes, the promotional material in evidence clearly states that individuals, business organizations and groups were invited to use St. Noel, regardless of whether the uses were religious oriented, or not, during 1993. In fact, the Murder Mystery Weekends promotional material for 1993, included in Department's Exhibit 2E, lists a number of available activities included in those weekends, and none of those activities appear to be primarily religious. Two hundred and eighteen of the users of St. Noel, during 1993, were participants in those Murder Mystery Weekends. In fact, approximately 37% of the users of St. Noel, during 1993, used the facility for purposes which did not qualify as either religious, or charitable. I conclude that 37% nonexempt use is most certainly more than merely incidental nonexempt use.

Where, as here, the property, as a whole, was used for both exempt purposes and nonexempt purposes, the property will qualify for exemption only if the exempt use is the primary use, and the nonexempt use is merely incidental. *Illinois Institute of Technology v. Skinner*, 49 Ill.2d 59

(1971); Sanitary District v. Carr, 304 Ill. 120 (1922); and Metropolitan Sanitary Dist. v. Rosewell, 133 Ill.App.3d 153 (1st Dist. 1985).

I therefore conclude that St. Noel and the land on which it stands, did not qualify for exemption, as having been used for primarily religious purposes during 1993.

35 ILCS 205/19.7 exempts certain property from taxation in part as follows:

"All property of institutions of public charity, all property of beneficent and charitable organizations, whether incorporated in this or any other state of the United States,...when such property is actually and exclusively used for such charitable or beneficent purposes, and not leased or otherwise used with a view to profit;...."

In the case of Methodist Old Peoples Home v. Korzen, 39 Ill.2d 149 (1968), the Illinois Supreme Court set forth six guidelines to be used in determining whether or not an organization is charitable. Those six guidelines read as follows: (1) the benefits derived are for an indefinite number of persons; (2) the organization has no capital, capital stock, or shareholders, and does not profit from the enterprise; (3) funds are derived mainly from private and public charity, and are held in trust for the objects and purposes expressed in the charter; (4) charity is dispensed to all who need and apply for it; (5) no obstacles are placed in the way of those seeking the benefits; and (6) the primary use of the property is for charitable purposes. Since St. Noel did not waive, or reduce, fees in cases of need, during 1993, I conclude that it failed to meet guidelines (1), (4), and (5). Since less than one percent of St. Noel's funds were derived from contributions, and the remainder of its funds were derived from fees for services, St. Noel failed to meet guideline number (3).

It should also be noted that the Illinois Courts have consistently held that the use of property to produce income is not an exempt use, even though the net income is used for exempt purposes. People ex rel. Baldwin

v. Jessamine Withers Home, 312 Ill. 136 (1924). See also The Salvation Army v. Department of Revenue, 170 Ill.App.3d 336 (2nd Dist. 1988), leave to appeal denied. It should also be noted that if property, however owned, is let for a return, it is used for profit, and so far as its liability for taxes is concerned, it is immaterial, whether the owner makes a profit, or sustains a loss. Turnverein "Lincoln" v. Board of Appeals, 358 Ill. 135 (1934).

Consequently, I conclude that since St. Noel and the land on which it stands, did not meet guidelines (1), (3), (4), (5), or (6), of the foregoing six guidelines, it was not primarily used for charitable purposes during 1993.

I therefore recommend that Johnson County parcel No. 03-34-303-000 and the buildings thereon, be exempt from real estate tax for the 1993 assessment year, except for the two-bedroom apartment and the land on which it stands in the infirmary, the seasonal staff housing, and the Cedars staff residence and the land on which they each stand, and St. Noel and the land on which it stands.

I further recommend that the two-bedroom apartment and the land on which it stands in the infirmary, the seasonal staff housing, and the Cedars staff residence and the land on which they each stand, and the Saint Noel Retreat and Conference Center and the land on which it stands, remain on the tax rolls for the 1993 assessment year, and be assessed to the applicant, the Catholic Diocese of Belleville, the owner thereof.

Respectfully Submitted,

George H. Nafziger
Administrative Law Judge

September , 1995